

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC, a Delaware
limited liability company; CAROLINE
RECORDS, INC., a New York Corporation;
VIRGIN RECORDS AMERICA, INC., a
California Corporation,

Plaintiffs,

v.

VIMEO, LLC d/b/a VIMEO.COM, a Delaware
Limited Liability Company; CONNECTED
VENTURES, LLC, a Delaware Limited
Liability Company, and DOES 1-20, inclusive,

Defendants.

EMI BLACKWOOD MUSIC, INC., a
Connecticut Corporation; EMI APRIL MUSIC,
INC., a Connecticut Corporation; EMI VIRGIN
MUSIC, INC., a New York Corporation;
COLGEMS-EMI MUSIC, INC., a Delaware
Corporation; EMI VIRGIN SONGS, INC., a
New York Corporation; EMI GOLD
HORIZON MUSIC CORP., a New York
Corporation; EMI U CATALOG, INC., a New
York Corporation; EMI UNART CATALOG
INC., a New York Corporation; JOBETE
MUSIC CO., INC., a Michigan Corporation;
and STONE DIAMOND MUSIC
CORPORATION, a Michigan Corporation,

Plaintiffs,

v.

VIMEO, LLC d/b/a VIMEO.COM, a Delaware
Limited Liability Company; CONNECTED
VENTURES, LLC, a Delaware Limited
Liability Company, and DOES 1-20, inclusive,

Defendants.

CASE NOS. 09 CV 10101 (RA)
09 CV 10105 (RA)

**DECLARATION OF JAMES D. BERKLEY
(1) IN SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT, AND (2) IN OPPOSITION
TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

**VOLUME 1 OF 2
[EXHIBITS 1 - 24]**

I, James Berkley, the undersigned, hereby declare as follows.

1. I am employed as a Senior Research Analyst at Mitchell Silberberg & Knupp LLP, counsel for Plaintiffs in this action. On or about August 20, 2009, I was tasked with investigation of the website available at www.vimeo.com (the "Vimeo Website") and with the preservation of certain evidence concerning the Vimeo Website with regard to Plaintiffs' claims in this action. I have personal knowledge of all of the following facts and, if called as a witness, could and would testify competently thereto.

2. Attached hereto as Exhibit 1 is a true and correct printout of the home page of the Vimeo Website, located at the URL <http://vimeo.com>, followed by true and correct copies of screenshots taken from the same web page URL, which I accessed and caused to be printed and/or captured on or about October 5, 2012 and October 10, 2012, respectively.

3. Attached hereto as Exhibit 2 is a true and correct copy of a page from the Vimeo Website located at the URL <http://vimeo.com/jobs>, which I accessed and caused to be printed on or about October 5, 2012.

4. Attached hereto as Exhibit 3 are true and correct copies of profile pages of various Vimeo "Staff" members on the Vimeo Website, located at the URLs <http://vimeo.com/jasondhi>, <http://vimeo.com/blakewhitman>, <http://vimeo.com/danielhayek>, <http://vimeo.com/sammorrill>, <http://vimeo.com/mattschwarz>, <http://vimeo.com/soxiam>, and <http://vimeo.com/seannelson>, which I accessed and caused to be printed on or about September 21, 2012 and October 9, 2012.

5. Attached hereto as Exhibit 4 is a true and correct copy of the page on the Vimeo Website appearing at the URL <http://vimeo.com/30089116>, entitled "Interview With Blake Whitman of Vimeo," which I accessed and caused to be printed on or about October 10, 2012.

6. Attached hereto as Exhibit 5 is a true and correct transcription of a portion of the video interview with Vimeo employee Blake Whitman located on the Vimeo Website at the URL <http://vimeo.com/30089116>, which was prepared under my direction on October 5, 2012 and October 8, 2012.

7. Attached hereto as Exhibit 6 is a true and correct copy of a page from the Vimeo Website located at the URL <http://vimeo.com/help/flash>, which I accessed and caused to be printed on or about October 6, 2012

8. Attached hereto as Exhibit 7 is a true and correct copy of a page from the Vimeo Website located at the URL <http://vimeo.com/blog/post:368>, which I accessed and caused to be printed on or about October 10, 2012.

9. Attached hereto as Exhibit 8 is a true and correct copy of a page from the Vimeo Website located at the URL <http://vimeo.com/new>, which I accessed and caused to be printed on or about October 5, 2012.

10. Attached hereto as Exhibit 9 are true and correct copies of a screenshot of a web page of the Vimeo Website located at the URL, <http://vimeo.com/about/press>, which I caused by be printed on or about October 8, 2012, and of a May 2012 press release accessed via this page located at the URL http://vimeo.com/assets/downloads/press_releases/05312012_musicstore.doc, entitled, "Vimeo Announces Cloud Based Video Enhancer Tool and Adds New Customizable Music to Its Music Store," which I downloaded on or about August 20, 2012 and caused to be printed on or about October 8, 2012.

11. Attached hereto as Exhibit 10 is a true and correct screenshot from a page on the Vimeo Website located at the URL <http://vimeo.com/musicstore#enhancer>, which I accessed and caused to be captured on or about October 8, 2012.

12. Attached hereto as Exhibit 11 is a true and correct copy of a page located on the Vimeo Website located at the URL <http://vimeo.com/blog/post:498> entitled, “Cool new music store features, plus new Vimeo for everyone,” which I accessed and caused to be printed on or about September 21, 2012.

13. Attached hereto as Exhibit 12 are true and correct copies of pages on the Vimeo Website pertaining to URLs hosting videos purported to have been deleted from the Vimeo Website on January 6, 2009 in response to Plaintiffs’ letter of December 11, 2008, which I visited and caused to be printed on October 8, 2012.

14. Attached hereto as Exhibit 13 are true and correct copies of pages on the Vimeo Website at the URLs <http://vimeo.com/8856026>, <http://vimeo.com/2778503>, and <http://www.vimeo.com/2666875>, respectively entitled “Beatles,” “The Beatles – When I’m 64 + Lucy in the Sky,” and “~Soul~ Diana Ross & The Supremes – Medley of Hits (1979),” which I accessed and caused to be printed on or about September 6, 2012 and November 24, 2009.

15. Attached hereto as Exhibit 14 is a true and correct copy of the initial portions of a page on the Vimeo Website located at the URL <http://vimeo.com/3212317>, which I accessed and caused to be printed on or about April 11, 2010, followed by a true and correct copy of the same page that I accessed and caused to be printed on or about June 25, 2010.

16. Attached hereto as Exhibit 15 is a true and correct copy of a chart created by me summarizing URLs of “Groups” pages on the Vimeo Website offering for download videos referenced in Exhibit 16 below.

17. Attached hereto as Exhibit 16 are true and correct copies of screenshots and/or pages printed from the Vimeo Website that were created by me or under my direction on dates between September 12, 2012 and October 9, 2012, documenting examples of pages on the

Vimeo Website from which Vimeo offers for download videos purportedly removed pursuant to a claim of infringement by either Plaintiffs or by third parties.

18. In September and October 2012, I personally downloaded or supervised the downloading of the videos containing Plaintiffs' works from the Vimeo website pages that are referenced in Exhibits 15 and 16. At the Court's request, I can provide a copy of a CD or DVD containing the downloaded video files.

19. Attached hereto as Exhibit 17 is a true and correct copy of a page dated May 8, 2009 on the Connected Ventures, LLC website CollegeHumor.com at the URL <http://www.collegehumor.com/video/4020253/all-nighter-09-daveydanceblog-64>, entitled "All Nighter '09: DaveyDanceBlog #64," which I visited and caused to be printed on or about May 13, 2012.

20. Attached hereto as Exhibit 18 are true and correct copies of screenshots and/or printed pages from the Vimeo Website, or from sources embedding videos therefrom, pertaining to videos in the "Davey Dance Blog" series, which I visited and caused to be printed or otherwise captured on dates between October 28, 2010 and October 11, 2012.

21. Attached hereto as Exhibit 19 is a true and correct copy of a page on the Vimeo Website located at the URL <http://www.vimeo.com/239389>, entitled "Rockin' Out," which I accessed and caused to be printed on or about November 23, 2009.

22. Attached hereto as Exhibit 20 is a true and correct copy of a page on the Vimeo Website located at the URL <http://www.vimeo.com/239378>, entitled "Rock at the office," which I accessed and caused to be printed on or about February 26, 2011.

23. Attached hereto as Exhibit 21 is a true and correct copy of a page on the Vimeo Website located at the URL <http://www.vimeo.com/239378>, which I accessed and caused to be

printed on or about October 8, 2012, stating that the video referenced in Exhibit 20 was now “private.”

24. Attached hereto as Exhibit 22 are true and correct copies of screenshots of a page on the Vimeo Website located at the URL <http://vimeo.com/222079>, entitled “Overnight Celebrity – Beach Lip Dub,” which were accessed and captured under my direction on or about October 28, 2010.

25. Attached hereto as Exhibit 23 are true and correct copies of screenshots of web pages on the Vimeo Website that were accessed and captured by me or under my direction during the course of this litigation , and which reflect videos added to Vimeo Staff-moderated channels such as “Staff Picks,” the “Vimeo HD Channel,” and “These Are Videos.”

26. Attached hereto as Exhibit 24 are true and correct copies of screenshots of web pages on the Vimeo Website that were accessed and captured by me or under my direction during the course of this litigation , and which reflect videos containing “likes” or public comments from Vimeo Staff members.

27. Attached hereto as Exhibit 25 are true and correct copies of pages on the Vimeo Website offering videos featuring the musical composition “ABC” as made popular by the Jackson 5 (a work listed on Schedule A to the Complaint of the EMI Publishing Companies), which I accessed and caused to be printed on or about May 5, 2012.

28. Attached hereto as Exhibit 26 are true and correct copies of pages on the Vimeo Website offering a video embodying the sound recording “Bittersweet Symphony” by the Verve (a work listed on Schedule A to the Complaint of the EMI Record Companies), which I accessed and caused to be printed on or about May 5-6, 2012.

29. Attached hereto as Exhibit 27 are true and correct copies of pages on the Vimeo Website offering videos described as containing the initial ten sound recordings listed on Schedule A to the Complaint of the EMI Record Companies, which I accessed and caused to be printed on or about October 7, 2012.

30. Attached hereto as Exhibit 28 are true and correct copies of screenshots of pages on the Vimeo Website that were accessed and captured by me or under my direction during the course of this litigation, and which offer videos referenced in Plaintiffs' proposed Amended Schedules¹ accompanied by banner advertisements.

31. Attached hereto as Exhibit 29 are true and correct copies of a screenshot from a page of the Vimeo Website located at the URL <http://vimeo.com/about/press>, which I caused to be printed on or about October 8, 2012, and of a September 2010 press release accessed via this page at the URL http://www.vimeo.com/assets/downloads/press_releases/09212010_vfa_finalists.pdf, entitled, "Vimeo Announces Finalists in 2010 Vimeo Awards For the Best in Creative Online Video," which I downloaded on or about September 29, 2012 and caused to be printed on or about October 8, 2012.

32. Attached hereto as Exhibit 30 is a true and correct copy of an archived web page from the Vimeo Website located at <http://web.archive.org/web/20100627012910/http://vimeo.com/awards/faq>, which I accessed and caused to be printed on September 15, 2012.

¹ On or about May 9, 2012, Plaintiffs furnished to Defendants proposed Amended Schedules, providing examples of more than 1000 additional copyrighted sound recordings, pre-1972 sound recordings, and copyrighted musical compositions to the lists of representative works alleged to be infringed by Defendants on the Vimeo Website, and specifying representative URLs for each. The proposed Amended Schedules are attached as Exhibits 70-72 to this declaration and discussed at ¶¶ 74-77.

33. Attached hereto as Exhibit 31 is a true and correct copy of Vimeo's "Community Guidelines" located at the URL <http://www.vimeo.com/guidelines>, as accessed and captured by me on or about September 15, 2009.

34. Attached hereto as Exhibit 32 is a true and correct copy of a screenshot obtained from the web page at the URL <http://vimeo.com/blog/post:140>, entitled "New Upload Rules on Vimeo," which I accessed and caused to be captured on or about October 9, 2012.

35. Attached hereto as Exhibit 33 is a true and correct copy of a letter received by my office on or about February 8, 2011, regarding the production by Defendants of a CD containing electronic files bearing the Bates number VCV041612 through VCV041614, described as referencing videos and users on the Vimeo Website that were subject to Vimeo's "bury" and "whitelist" procedures.

36. Beginning on or about June 2, 2012, I undertook an analysis to determine the total number of "whitelisted" and "buried" videos reflected in the documents produced as VCV041612 and VCV041613, and to determine the total number of videos listed as either "whitelisted" or "buried" in these documents that were referenced in the schedules to Plaintiffs' Complaints or in Plaintiffs' proposed Amended Schedules. Upon loading the data contained in VCV041612 and VCV041613 into separate spreadsheet tables using the software program Excel, and labeling the columns as indicated in Defendants' letter of February 8, 2011, I determined that VCV041612 contained records for 710,448 "whitelisted" videos, and that VCV041613 contained records for 71,813 "buried" videos.

37. To continue my analysis of VCV041612 and VCV041613, I placed in separate columns in my spreadsheet the "clip ID" numbers and other information pertaining to works listed in Plaintiff's schedules, and created a function to check if each clip ID listed in

VCV041612 and VCV041613 matched any of the unique ID numbers of the videos in these schedules. By doing this, and as set forth in the exhibits described below, I was able to determine that there were matches in at least 90 instances for the whitelisted videos listed in VCV041612, and at least 50 instances for the “buried” videos listed in VCV041613.

38. Attached hereto as Exhibit 34 is a true and correct copy of a table created by me using the method describe above, reflecting 20 entries in VCV041612 (i.e., “whitelisted” videos) that matched the unique ID numbers of videos referenced in the schedules to Plaintiffs’ Complaints. As explained in Defendants’ letter of February 8, 2011, the “user_whitelist” column reflects whether the Vimeo user himself or herself has been whitelisted by Vimeo.

39. Attached hereto as Exhibit 35 is a true and correct copy of a table created by me using the method describe above, reflecting more than 70 entries in VCV041612 (i.e., “whitelisted” videos) that matched the unique ID numbers of additional videos that were referenced for the first time in Plaintiffs’ proposed Amended Schedules. There are duplicate entries in a small number of cases, and the number of unique matching IDs among these additional videos is 70.

40. Attached hereto as Exhibit 36 is a true and correct copy of a table created by me using the method describe above, reflecting 4 entries in VCV041613 (i.e., “buried” videos) that matched the unique ID numbers of videos referenced in the schedules to Plaintiffs’ Complaints.

41. Attached hereto as Exhibit 37 is a true and correct copy of a table created by me using the method describe above, reflecting 50 entries in VCV041613 (i.e., “buried” videos) that matched the unique ID numbers of additional videos that were referenced for the first time in Plaintiffs’ proposed Amended Schedules.

42. Attached hereto as Exhibit 38 are true and correct copies of screenshots from a web page on the Vimeo Website located at <http://vimeo.com/2169237>, entitled “London *harder, better, faster, stronger)”, which I accessed and caused to be captured on or about September 22, 2009. As can be seen in Exhibit 34, the ID number for this video appears in Vimeo’s list of “whitelisted” videos.

43. Attached hereto as Exhibit 39 are true and correct copies of screenshots from a web page on the Vimeo Website located at <http://vimeo.com/7753547>, entitled “Helter Skelter,” which I accessed and caused to be captured on or about February 17, 2011. As can be seen in Exhibit 35, the ID number for this video appears in Vimeo’s list of “whitelisted” videos.

44. Attached hereto as Exhibit 40 are true and correct copies of screenshots obtained from pages of the websites of YouTube.com, Veoh.com, and Dailymotion.com, which I accessed and caused to be captured on or about October 7, 2012.

45. Attached hereto as Exhibit 41 is a true and correct copy of an article entitled “YouTube for Artistes” appearing on the website www.slate.com, which I accessed and caused to be printed on or about October 5, 2012.

46. Attached hereto as Exhibit 42 are true and correct copies of pages on the Vimeo Website referencing YouTube, which were accessed and printed by me on dates between June 26, 2010 and August 28, 2012.

47. Attached hereto as Exhibit 43 is a true and correct copy of a page on the Vimeo Website at the URL <http://www.vimeo.com/forums/topic:7958>, which I accessed and caused to be printed on or about September 17, 2009.

48. Attached hereto as Exhibit 44 is a true and correct copy of a page on the Vimeo Website at the URL <http://vimeo.com/123498>, entitled “Lip Dubbing: Endless Dream,” which I accessed and caused to be printed on or about October 5, 2012.

49. Attached hereto as Exhibit 45 is a true and correct copy of a page on the Vimeo Website at the URL <http://vimeo.com/173714>, entitled “Lip Dub – Flagpole Sitta by Harvey Danger,” which I accessed and caused to be printed on or about October 11, 2012.

50. Attached hereto as Exhibit 46 is a true and correct copy of a page on the Vimeo Website at the URL <http://vimeo.com/333721>, entitled “The Dark Side of Oz,” which I accessed and caused to be printed on or about May 8, 2012.

51. Attached hereto as Exhibit 47 are and true and correct copies of screenshots from a page on the Vimeo Website at the URL <http://vimeo.com/2617531>, entitled “Lip Dub - Rock DJ starring Revolution IT,” which I accessed and captured on or about November 7, 2010, and subsequently on October 8, 2012. It is my understanding that this video contains the sound recording “Rock DJ” by Robbie Williams, which is on Plaintiffs’ Amended Schedules.

52. Attached hereto as Exhibit 48 is a true and correct copy of a page on the Vimeo Website at the URL <http://vimeo.com/5138837>, entitled “Bob,” which I accessed and caused to be printed on or about May 12, 2011. It is my understanding that this video incorporates the sound recording “DARE” by Gorillaz, which is referenced on Schedule A to the Complaint of the EMI Record Companies.

53. Attached hereto as Exhibit 49 are true and correct copies of pages from the Vimeo website located at the URLs <http://vimeo.com/channels/foiliageskateboards/29187013> and <http://vimeo.com/channels/foiliageskateboards>, which I accessed and caused to be printed or otherwise captured on or about October 27, 2010 and June 30, 2012, respectively.

54. Attached hereto as Exhibit 50 is a true and correct copy of page on the Vimeo Website at the URL <http://vimeo.com/videoschool/lesson/36/video-101-editing-sound-and-music-with-imovie> , entitled “Video 101: Editing Sound & Music with iMovie,” which I accessed and caused to be printed on or about February 22, 2011.

55. Attached hereto as Exhibit 51 is a true and correct copy of page on the Vimeo Website at the URL <http://vimeo.com/videoschool/lesson/27/video-101-editing-sound-and-music-with-windows-live-movie-maker> , entitled “Video 101: Editing Sound & Music with Windows Live Movie Maker,” which I accessed and caused to be printed on or about February 9, 2011.

56. Attached hereto as Exhibit 52 is a true and correct copy of page on the Vimeo Website at the URL <http://vimeo.com/videoschool/lesson/45/get-funky-with-photomotion>, entitled “Get Funky with Photomotion,” which I accessed and caused to be printed on or about February 23, 2011.

57. Attached hereto as Exhibit 53 are true and correct copies of pages on the Vimeo Website offering links to Vimeo Video School lessons in connection with videos incorporating music owned by Plaintiffs in this action, which were accessed and printed by me on dates between February 20, 2011 and March 10, 2011.

58. Attached hereto as Exhibit 54 is a true and correct copy of page on the Vimeo Website at the URL <http://vimeo.com/41079826>, entitled “Katy Perry | California Gurls | Hair by Danilo,” which I accessed and caused to be printed on or about October 5, 2012.

59. On September 11, 2012 and October 8, 2012, I experimented with entering Vimeo-related search queries on the Google search engine available at www.google.com. In each instance I first cleared the browser cache on my computer (including any browser

“cookies”) and entered the search query “vimeo copyrighted music” as a single phrase. True and correct screenshots documenting these search queries and the results supplied by Google are attached hereto as Exhibit 55, including screenshots indicating the page to which I was automatically directed when I clicked the Google button “I’m Feeling Lucky,” which is a Vimeo.com page entitled “Copyrighted Music” at the URL <http://vimeo.com/forums/topic:3431>.

60. Attached hereto as Exhibit 56 are true and correct copies of pages on the Vimeo website at the URLs <http://www.vimeo.com/forums/topic:7958>, <http://vimeo.com/mattschwarz>, and <http://vimeo.com/forums/topic:3431>, which I accessed and caused to be printed on or about October 11, 2012.

61. Attached hereto as Exhibit 57 are true and correct copies of archived web pages showing a “Featured Music” component on the Vimeo Website located at the URLs <http://web.archive.org/web/20070706083055/http://vimeo.com/202585> and <http://web.archive.org/web/20070706073754/http://vimeo.com/175091>, which I accessed and caused to be printed on October 9, 2012.

62. Attached hereto as Exhibit 58 is a true and correct copy of page on the Vimeo Website at the URL <http://www.youtube.com/t/contentid>, entitled “YouTube AudioID & YouTube VideoID,” which I accessed and caused to be printed on or about October 5, 2012.

63. Attached hereto as Exhibit 59 are true and correct copies of documents retrieved and downloaded by me via the website of the United States Patent and Trademark Office at the URL <http://www.uspto.gov> on or about August 20, 2012, reflecting application materials submitted on or about July 26, 2007 with respect to U.S. Trademark Application Serial Nos. 77/239,258 and 77/239,221.

64. Attached hereto as Exhibit 60 are true and correct copies of screenshots from a page on the Vimeo Website located at the URL <http://vimeo.com/4799412>, entitled “Lip Dubbing: Hennesey & Buddah (Explicit),” by the user “jchap (Jeremy Chapman),” which I accessed and caused to be captured on or about October 24, 2010.

65. Attached hereto as Exhibit 61 are true and correct copies of screenshots of archived pages from the Vimeo Website depicting videos by the user “jchap (Jeremy Chapman),” located at the URLs <http://web.archive.org/web/20081215004815/http://www.vimeo.com/145615> and <http://web.archive.org/web/20090101223904/http://www.vimeo.com/247846> , which I accessed and caused to be printed on or about October 9, 2012.

66. Attached hereto as Exhibit 62 are true and correct copies of pages on the Vimeo Website asserting that videos formerly residing at the URLs <http://vimeo.com/145615>, <http://vimeo.com/247846>, and <http://vimeo.com/4799412> had been removed or disabled pursuant to infringement claims, which I accessed and caused to be captured on or about October 9, 2012.

67. Attached hereto as Exhibit 63 is a true and correct copy of the current profile of “jchap (Jeremy Chapman)” on the Vimeo Website at the URL <http://vimeo.com/nonsense>, which I accessed and caused to be captured on or about October 9, 2012.

68. Attached hereto as Exhibit 64 are true and correct copies of screenshots from a page on the Vimeo Website located at the URL <http://vimeo.com/9333689>, entitled “Alyshaaa Roller Derby Girl,” which I accessed and caused to be printed on or about October 9, 2012.

69. Attached hereto as Exhibit 65 is a true and correct copy of a page on the Vimeo Website located at the URL <http://vimeo.com/106867>, entitled “All Together Now,” which I accessed and caused to be captured on or about June 26, 2010. Although the video reflected in

this page was not available for streaming, I was able to download this video on or about October 26, 2010, and determined that it incorporated the sound recording “All Together Now” by the Beatles.

70. Attached hereto as Exhibit 66 is a true and correct copy of a page on the Vimeo Website at the URL <http://vimeo.com/forums/topic:3687>, entitled “Audio Out of Sync After Uploading,” which I accessed and caused to be printed on or about September 28, 2012.

71. Attached hereto as Exhibit 67 is a true and correct copy of a letter received by my office on or about November 10, 2010, regarding the production by Defendants of a CD containing an electronic file bearing the Bates number VCV041496, described as representing videos in Vimeo’s “Purgatory” database through November 9, 2010.

72. Attached hereto as Exhibit 68 is a true and correct printout displaying the first 100 records of the document produced after I loaded the data contained in the file produced as VCV041496 into the spreadsheet program Excel, labeled the fields according to the letter attached as Exhibit 67, sorted the entries chronologically by the “creation date” field, filtered them to show records designated as pertaining to a copyright notice (i.e., “1” as opposed to “0”), and formatted the contents for readability, without altering or otherwise manipulating any of the file’s contents.

73. Attached hereto as Exhibit 69 are true and correct copies of pages on the Vimeo Website asserting that videos corresponding to certain “clip IDs” and “reasons for removal” shown in VCV041496 had been removed or disabled at the dates and times indicated in the “creation date” field of VCV041496. These pages were accessed and printed by me on or about October 9, 2012.

74. As part of my duties with regard to this litigation, I oversaw the collection and review of evidence in connection with the preparation of Plaintiffs' proposed Amended Schedules. On or about May 9, 2012, Plaintiffs furnished to Defendants proposed Amended Schedules, providing examples of more than 1000 additional copyrighted sound recordings, pre-1972 sound recordings, and copyrighted musical compositions to the lists of representative works alleged to be infringed by Defendants on the Vimeo Website, and specifying representative URLs for each.

75. Attached hereto as Exhibit 70 is a true and correct copy of the proposed Amended Schedule A prepared on behalf of the EMI Record Companies.

76. Attached hereto as Exhibit 71 is a true and correct copy of the proposed Amended Schedule B prepared on behalf of the EMI Record Companies.

77. Attached hereto as Exhibit 72 is a true and correct copy of the proposed Amended Schedule A prepared on behalf of the EMI Publishing Companies.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Los Angeles, California this 12th day of October, 2012.


James D. Berkley